UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

| CHARLES BOLDING, et al, |) Case No. 2:16-cv-00617-RFB-CWH |
|-------------------------|----------------------------------|
| Plaintiff, | |
| V. | |
| NAV-LVH, LLC, | ORDER |
| Defendant. |)) |
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Presently before the Court is Plaintiff Tony Varay's motion to substitute (ECF No. 46) filed on June 27, 2017. Defendant filed a response (ECF No. 51) on July 21, 2017, and Plaintiff filed a reply (ECF No. 54) on August 8, 2017.

Plaintiff moves to substitute Robert Varay in place of Toni Varay, who is deceased. Plaintiff represents that Robert Varay is Toni Varay's son and sole legal heir, so he should be allowed to continue on in this case as Toni Varay's legal representative. Defendant opposes the substitution, arguing that Mr. Varay has not established that he is entitled to serve as Toni Varay's legal representative under Nevada law. Defendant further argues that regardless of substitution, Toni Varay's claims for penal or punitive damages were extinguished upon her death.

Defendant's argument against substitution relies on *Mahoney v. Fahey*, 200 F.2d 918, 920 (9th Cir. 1952). The Court does not agree with Defendant's assertion that *Mahoney* requires denial of the motion with prejudice. However, the case does suggest that a new party may not substitute for a deceased party without establishing that the new party is the proper legal representative of the deceased. It is a matter of Nevada law whether or not Robert Varay is Toni Varay's proper legal representative, but the parties briefings thus far have not provided a clear answer to that question. The Court requires further briefing on this issue.

As for Defendant's argument that Plaintiff's penal or punitive damages were extinguished upon her death, the Court need not make that determination at this point. The operative complaint (ECF No. 39) seeks compensatory as well as penal or punitive damages, and Defendant does not

argue that the claim for compensatory damages was extinguished upon Toni Varay's death. Therefore, for purposes of Fed. R. Civ. Proc. 25(a), Plaintiff's claim is not extinguished.

IT IS THEREFORE ORDERED that Plaintiff may file a supplemental brief in support of his motion to substitute (ECF No. 51) no later than August 24, 2017. Defendant may file a supplement within seven days of Plaintiff's supplement. Any supplemental briefs for this motion shall be limited to the issue of whether under Nevada law, Robert Varay may serve as Toni Varay's legal representative in this case, and if so, whether this Court has authority to approve such an appointment.

DATED: August 10, 2017

C.W. Hoffman, Jr.
United States Magistrate Judge